IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 161 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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UNITED INDIA INSURANCE CO. LTD

Versus

BOTHAJI NATHAJI

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Appearance:

MR DARSHAN M PARIKH for Petitioner

MR BR PARIKH for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/01/2001

ORAL JUDGEMENT

#. The present petitioner had preferred Review Application before the Motor Accident Claims Tribunal (Aux.), Ahmedabad (Rural) at Mirzapur being Civil Misc.

Application No.668/93 in Motor Accident Claims Petition No.637/83. Earlier, the judgment and award was passed by the Tribunal in the aforesaid petition, but thereafter, the present petitioner has preferred the said review application. Since there was delay of 242 days, an application for condonation of delay was made. However, Joint District Judge, Ahmedabad (Rural) at Mirzapur rejected the said delay condonation application against which the present revision application has been filed and execution of the award was stayed by this court on condition that the petitioner herein should deposit the entire amount with costs and interest within stipulated time.

#. Mr.Parikh for the petitioner states that the said amount is deposited before this court and is lying with this court.

#. So far as delay part is concerned, it is the say of Mr.Parikh that, initially, they have preferred First Appeal, but they have withdrawn the said First Appeal for filing the review application. He states that, there is sufficient cause for condonation of delay. He also pointed out that because of the communal riots in the City, concerned advocate was busy and he lost sight of the matter. It was found that the Insurance Company was negligent and there is laxity on their part to file the aforesaid proceedings.

#. It is no doubt true that there may be some laxity on the part of the petitioner herein. However, it is well settled position of law that, question of condonation of delay is required to be considered liberally. There are series of judgments to the aforesaid point to the effect that the court should take liberal approach in such matters. The petitioner cannot be said to be totally negligent especially when they have filed the First Appeal within time and ultimately in order to file the review application, they have withdrawn the same. There may be some lack of communication in between which ultimately resulted in the aforesaid delay. However, broad view is required to be taken at the time of deciding such applications.

#. Mr.B.R.Parikh for the respondents has not seriously objected condonation of delay in filing the review application before the Tribunal. He urged that, half of the amount has already been withdrawn by his client, which is deposited in this court. He further requested that he may be permitted to withdraw the remaining amount which is lying before this court. The amount of deposit

which is lying before this court is directed to be transmitted to the Tribunal and after receiving the said amount the Tribunal will disburse the said amount in favour of the original respondents after taking appropriate security to its satisfaction. However, so far as the condonation of delay part is concerned, I think that, in the facts and circumstances of the case, the delay occurred in filing the review application before the Tribunal is required to be condoned. Normally, the cause should not suffer on account of delay and it can be said that the petitioner herein has also explained the delay in filing the application. It is not necessary for them to explain delay of each day.

#. Accordingly, the delay in filing the review application before the Tribunal is condoned and this Revision Application is allowed. It is, however, clarified that the original claimant, i.e. the respondent No.1 herein, is entitled to withdraw the amount by furnishing the appropriate security to the satisfaction of the Tribunal and, as stated earlier, the amount lying in this court, therefore, should be transmitted to the Tribunal immediately. The Tribunal thereafter will disburse the said amount in favour of the respondent No.1 and for that purpose, the respondent No.1 should give sufficient security to the satisfaction of the Tribunal. It is needless to say that the said withdrawal will be subject to the ultimate outcome of the proceedings before the Tribunal. After the said disbursement, the Tribunal will proceed further with the main review application and dispose of the same in accordance with law.

#. Rule is accordingly made absolute with no order as to costs.

(P.B.Majmudar,J)
(pathan)